

Meese Told Panel CIA's Actions May Have Broken Law

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Attorney General Edwin Meese III told the Tower commission this month that the Central Intelligence Agency may have violated the law in supporting a November 1985 arms shipment to Iran without President Reagan's explicit authorization.

Meese said in a two-page letter dated Feb. 18 that a presidential "finding" that the shipment was important to the national security would have been required under the circumstances described to him before the review board.

The three-member panel headed by former senator John G. Tower (R-Tex.), Meese said, had asked him to assume that the CIA "without prior presidential authorization, assisted in the November 1985 arms shipment to Iran by attempting to obtain flight clearances at a foreign airport and by arranging for a proprietary airline to carry the arms from Israel to Iran."

"The question further assumed that the objective of the transfer was to influence the policy and actions of a foreign government while not publicly disclosing the American role in exerting that influence," Meese said.

"Under these circumstances," he concluded, "I believe that a finding under the Hughes-Ryan amendment would be required."

That law, passed in the early 1970s and later amended, prohibits the CIA from spending money on covert actions "unless and until the president finds that each such operation is important to the security of the United States."

Reagan did not sign the finding approving the Iran initiative until Jan. 17, 1986. The incident is one of many instances cited by the Tower commission of the dubious legal authority underpinning the Iran-contra affair. Questions that were raised about legal questions were often dismissed without benefit of a lawyer's assessment, according to the report. At other times, it appears, officials searched for loopholes.

The commission punctuated its concern at the outset of one chapter with a line from the Roman satirist, Juvenal: "*Quis custodiet ipsos custodes?*" A free translation is "Who watches the watchdogs?"

When Meese last fall publicly detailed the secret arms sales and suspected diversion of funds to aid the contras fighting the government of Nicaragua, he took the position that the 1985 shipments, via Israel, were legal. A Justice Department spokesman said yesterday that Meese's new letter, released Thursday as part of the Tower commission report on the Iran-contra affair, was a response to "a kind of worst-case interpretation" of the situation.

The CIA supported the November 1985 shipment of 18 Hawk anti-aircraft missiles to Iran after initial arrangements for an Israeli flight through Lisbon fell apart when the Portuguese government refused flight clearances.

Alerted to the problem in Geneva where he was attending the U.S.-Soviet summit, then-national security adviser Robert C. McFarlane told Reagan of the snafu while Oliver North, in Washington, called the CIA for help.

Duane Clarridge, then-European division chief of the CIA's operations directorate, told the Tower commission that North phoned him Nov. 21, 1985, about getting overflight clearance for an El Al flight. Clarridge said he was told by another official that the flight was part of an operation to free American hostages, but the CIA was permitted to reveal "only that the flight had a humanitarian purpose."

Despite the CIA's efforts, however, landing rights were denied and the CIA's air branch suggested use of a proprietary airline. Clarridge said he was concerned about that, asked a superior for approval and got it.

In its report last month, the Senate Select Committee on Intelligence said the proprietary airline "flew from Israel . . . carrying 18 Hawk missiles identified as oil-drilling spare parts." The committee said "there was speculation at the CIA [at the time] that the cargo

was actually arms," but North, when asked by the agency, "reaffirmed that the flight was carrying oil-drilling equipment."

CIA spokesman George Lauder took the same position yesterday on Meese's letter. "I think you're misreading what Meese is saying," Lauder told a reporter. "My interpretation is that if we knew arms were aboard that flight, there should have been a [presidential finding]. Meese is saying that if we didn't know, there didn't need to be a finding. And that was the fact."

Reagan's nominee as CIA director, Robert M. Gates, told the Senate intelligence panel last week that he had also been advised, in 1985, by the agency's then-general counsel, Stanley Sporkin, that a finding was not required by law for the November operation.

Sporkin drafted one anyway, because then-deputy CIA director John McMahon, as he put it, "went through the overhead, pointing out that there was no way we could become involved" in any shipment to Iran, whatever its character, without a finding. Sporkin's draft would have blessed the operation "retroactively." According to the Tower report, however, Reagan apparently never signed it.

Another legal issue spotlighted in the Tower report was a classified legal memorandum found in North's safe concerning a law enacted in 1984 to prohibit the CIA, the Defense Department and any other "entity of the United States involved in intelligence activities" from spending any money that would support "directly or indirectly, military or paramilitary operations in Nicaragua."

The 1985 memo, prepared by the president's Intelligence Oversight Board, which was set up as a watchdog agency, concluded that the National Security Council was "not covered" by the ban, partly on grounds that the executive order making the NSC the "highest executive branch entity" responsible for conduct of foreign intelligence did not designate NSC as one of the agencies, in "the intelligence community."

The Tower commission indicated that it did not think much of this opinion, and said, in any case, that the presidential board was "an odd source" for original legal advice to another agency. The NSC has its legal counsel.